

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RICHARD DOHERTY,)	CIVIL ACTION
Plaintiff)	NO. 1:11-CV-10953
v.)	
)	
THOMAS M. GUERINO, in both)	
His individual and official capacity and)	
THE TOWN OF BOURNE,)	
Defendants)	

**ANSWER AND JURY DEMAND OF THE DEFENDANTS, THOMAS M. GUERINO, IN
BOTH HIS INDIVIDUAL AND OFFICIAL CAPACITY, AND THE TOWN OF BOURNE**

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted, in that the defendants have no obligation to pay the plaintiff any amount of the loss or damages alleged.

THIRD DEFENSE

The defendants respond to the allegations in the plaintiff's Complaint as follows:

I. INTRODUCTION

The defendants denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

II. JURISDICTION

The defendants neither admit nor deny the allegations contained in this paragraph of the plaintiff's complaint because they call for a legal conclusion to which no responsive pleading is

required. To the extent that the allegations are intended to relate or pertain to these defendants, the defendants deny the allegations and call upon the plaintiff to prove same.

III. PARTIES

1. The defendants admit the allegations contained in this paragraph.
2. The defendants admit the allegations contained in this paragraph.
3. The defendants admit the allegations contained in this paragraph.

IV. FACTS

4. The defendants admit the allegations contained in this paragraph.
5. The defendants admit the allegations contained in this paragraph.
6. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.
7. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.
8. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.
9. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

10. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

11. The defendants admit the allegations contained in this paragraph.

12. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

13. The defendants neither admit nor deny the allegations contained in this paragraph because it have no personal knowledge of same. The defendants calls upon the plaintiff to prove those allegations.

14. The defendants neither admit nor deny the allegations of the first sentence of this paragraph because they have no personal knowledge of same. The defendants calls upon the plaintiff to prove those allegations. As to the second sentence of this paragraph, the defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

15. The defendants neither admit nor deny the allegations contained in this paragraph because they have no personal knowledge of same. The defendants call upon the plaintiff to prove those allegations.

16. The defendants admit the allegations contained in this paragraph.

17. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

18. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

19. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

20. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

21. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

22. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

23. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

24. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

25. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

26. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

27. The defendants neither admit nor deny the allegations contained in this paragraph because they have no personal knowledge of same. The defendants call upon the plaintiff to prove those allegations.

28. The defendants neither admit nor deny the allegations contained in this paragraph because it have no personal knowledge of same. The defendants call upon the plaintiff to prove those allegations.

29. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

30. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

31. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

32. The defendants neither admit nor deny the allegations contained in this paragraph because they have no personal knowledge of same. The defendants call upon the plaintiff to prove those allegations.

33. The defendants admit that Dan Doucette learned of Doherty's postings but neither admit nor deny he learned of the postings during the summer of 2010 because they have no personal knowledge of same. The defendants call upon the plaintiff to prove those allegations.

34. The defendants admit the allegations contained in this paragraph.

35. The defendants admit the allegations contained in this paragraph; however, there were additional charges made against plaintiff.

36. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

37. The defendants admit the allegations contained in this paragraph.

38. The defendants admit the allegations contained in this paragraph; however, the Town Administrator, Mr. Guerino, made his decision based upon the hearing officer's findings as well as all evidence introduced.

39. The defendants admit that Doherty's Facebook postings formed part of the basis of the decision to terminate Doherty, but deny the Facebook postings were the sole basis of the decision to terminate.

40. The defendants admit that Doherty's Facebook postings formed part of the basis of the decision to terminate Doherty, but deny the Facebook postings were the sole basis of the decision to terminate.

41. The defendants admit the allegations contained in this paragraph.

COUNT I
(First Amendment; 42 U.S.C. §1982)

42. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

43. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

COUNT III
(Massachusetts Declaratory Judgment Act; M.G.L. ch.231A §1)

44. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

45. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

46. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

COUNT III
(Massachusetts Civil Rights Act, M.G.L., c.12 §111)

47. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

48. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

49. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

50. The defendants deny the allegations contained in this paragraph, deny that the plaintiff is entitled to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

AFFIRMATIVE DEFENSES

FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that they are immune from suit because of the doctrine of qualified immunity.

FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff is barred from recovery, particularly as his Complaint seeks equitable relief, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims are barred by the jurisdictional doctrines of collateral estoppel and res judicata.

SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims are barred insofar as the plaintiff consented to the actions of the defendants.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the actions of the defendants, at all times, were justified, necessary, carried out in good faith and with sufficient legal cause, and in conformity with settled principles of constitutional or other law.

NINTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that, at all times, the defendants acted in good faith reliance on constitutional, statutory, judicial or other legal authority.

TENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants say that the action is barred by the applicable statutes of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff by his conduct, or by the conduct of his agents or servants, has waived or should be estopped from asserting some or all of the claims set forth in the Complaint.

TWELFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the actions of the defendants, at all times, were reasonable and undertaken with a good faith belief that their actions were lawful and not in violation of any federal or state constitutional or statutory right.

THIRTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the injuries and damage claimed by the plaintiff were caused by the acts of a third party, which acts defendants had no reason to anticipate and of which person the defendants had no control and are not responsible as a matter of law.

FOURTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the injuries and damage claimed by the plaintiff were the result of supervening and intervening causes unrelated to the conduct of any of the defendants, and the defendants therefore are not liable.

FIFTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff has failed to mitigate any claimed injury or damage, as required by law.

SIXTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claimed injuries or damages were caused, in whole or in part, by the plaintiff's violation of the various statutes, ordinances, regulations, policies or other legal authority governing the conduct of the parties at the time that said injuries or damages were sustained.

SEVENTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims are barred since there is no evidence that the defendants acted recklessly or with callous indifference to the plaintiff's rights.

EIGHTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the Complaint must be dismissed for lack of service and/or insufficiency of service of process, in that the Complaint was not properly served on the defendants.

NINETEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff is not eligible for punitive damages from the defendants.

TWENTIETH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state the alleged actions of the defendants were not calculated to cause damage to the plaintiff.

TWENTY-FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff failed to exhaust administrative remedies prior to filing the present suit.

TWENTY-SECOND AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff failed to exhaust contractual remedies prior to filing the present suit.

TWENTY-THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims are frivolous and not made in good faith, and the defendants therefore demand their costs and attorneys' fees.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims because the plaintiff has an adequate post-deprivation remedy.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The defendants state that the alleged actions of the defendants were not the proximate cause of any damages or injuries sustained by the plaintiff.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims must fail since the defendants' actions, at all times, were required in the interest of the public and the means used by the defendants were reasonably necessary for the accomplishment of this purpose and not unduly oppressive upon the plaintiff.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants say that the defendants' conduct was justified in theory and practice by a legitimate bona fide interest.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the plaintiff has failed to satisfy the statutory requirements and conditions precedent necessary to maintain this action.

TWENTY-NINTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claim must fail since the defendants' actions were not arbitrary, irrational or unreasonable.

THIRTIETH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that any undisputed actions taken by the defendants in connection with the allegations in the Complaint were justified and required by considerations of public health, safety, and welfare.

THIRTY-FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that they are immune from liability for damages for any violation of the plaintiff's civil rights since their conduct at all relevant times was in good faith, without malice and not in disregard of settled principles of constitutional law.

THIRTY-SECOND AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that at all times they acted reasonably, within the scope of their official discretion and with a good faith belief that their actions were lawful and not in violation of any clearly established statutory or constitutional right

of which a reasonable person would have known with regard to all matters in the Complaint which bear on a state or federal question.

THIRTY-THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants say that their acts and conduct were performed according to and protected by law and/or legal process and, therefore, the plaintiff cannot recover.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The defendants states that the plaintiff is unable to recover since he cannot show actual damages.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims are barred since there is no evidence that the defendants acted recklessly or with callous indifference to the plaintiff's rights.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff has not set forth an actionable claim against the defendants since they are not subject to individual liability.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant, Town of Bourne, states that the plaintiff cannot show that a "policy or custom" caused the alleged constitutional deprivation.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claim pursuant to 42 U.S.C. §1983 cannot succeed because the plaintiff cannot demonstrate a deprivation of a

federal constitutional or statutory right as a result of the defendants' actions under color of state law.

THIRTY-NINTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff cannot show that is speech was constitutionally protected under the First Amendment when it was not made upon matters of public concern or matters of political, social, or other concern to the community.

FORTIETH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff speech was made in pursuant to his official duties and therefore the plaintiff is barred from recovering under 42 U.S.C. §1983.

FORTY-FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claims are barred because plaintiff cannot show the requisite threats, intimidation or coercion necessary to establish a claim pursuant to the Massachusetts Civil Rights Act, M.G.L. c 12 §11I.

FORTY-SECOND AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claim pursuant to the Massachusetts Civil Rights Act, M.G.L. c 12 §11I is barred against a municipality such as the Town of Bourne.

FORTY-THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff cannot demonstrate his interest in the speech outweighed the defendants' countervailing interest as an employer in promoting the efficiency of the public services it provides through its employees and therefore his claims must fail.

FORTY-FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff's claim for Declaratory Relief is barred because it is premature and pre-empted by other statutes.

JURY DEMAND

The Defendants, Thomas M. Guerino, in both his individual and official capacity, and the Town of Bourne, demand a trial by jury.

The Defendants,
**Thomas M. Guerino, in both his individual and
official capacity, and the Town of Bourne**
By their attorneys,

MORRISON MAHONEY LLP

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on 10/5/2011.

/s/Gareth W. Notis, Esq.
Gareth W. Notis, Esq.